

Notice of Allowability

Application No.

09/577,118

Examiner

Dwin M Craig

Applicant(s)

ODHNER ET AL.

Art Unit

2123

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 7-19-2004.
2. ☒ The allowed claim(s) is/are 22-25,27,29-37 and 39-41.
3. ☒ The drawings filed on 5-21-2000 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

[Signature]
KEVIN J. TESLA
SUPERVISORY
PATENT EXAMINER

DETAILED ACTION

And

NOTICE OF ALLOWANCE

1. **Claims 2-25, 27, 29-37 and 39-41** are allowed.

Specification

2. The Examiner thanks the Applicant for amending the specification on page 3 by providing the correct application number.

Reasons for Allowance

3. The following is an examiner's statement of reasons for allowance:

3.1 The broadest independent claims in the current Application are independent **Claims 9 and 10** the Examiner's reasons for allowance are directed towards those two claims. The prior art fails to teach or make obvious the following limitations in combination with other limitations disclosed in independent **Claims 9 and 10**, *"running a test script on a master server to simulate load and server utilization conditions that existed on a server when the recorded values were recorded"* in combination with, *"increasing the load on the server, when the test script is running, until a maximum load that can be handled by the server is obtained."* The prior art of record fails to teach or make obvious the combination of *running a test script*, derived from recorded values and then *running the test script from the master server* in a server cluster, and then *increasing the load on the server, while the test script is running*. These specific structural combinations of claimed limitations in combination with Applicant's instant

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amendments, and in combination with Applicant's arguments in regards to the prior art applied; have been, in combination, persuasive as to overcome the prior art.

3.2 Dependent **Claims 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 24, 25, 27, 30, 31, 32 and 33** are allowed as they depend upon an allowed base claim.

3.3 Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- 1. U.S. Patent 6,086,618** discloses for estimating total resource use requirements for servers.
- 2. U.S. Patent 5,761,091** discloses determining utilization parameters for data base servers.
- 3. U.S. Patent 6,574,587** discloses using auto regression methods to determine CPU utilization.
- 4. U.S. Patent 6,542,854** discloses methods of profiling server systems
(Figure 6).

4.1 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwin M Craig whose telephone number is 703 305-7150. The examiner can normally be reached on 10:00 - 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Teska can be reached on 703 305-9704. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DMC



KEVIN J. TESKA
SUPERVISORY
PATENT EXAMINER